

**REMARKS**

Claims 1, 3-12, 15-26 and 28-39 are pending. Claims 1 and 28-39 have been amended.

The Office Action objected to the specification and rejected claims 28-39 under 35 U.S.C. §101 and §112 because of the use of the term “computer-readable medium.” The position was taken that a computer-readable medium is not disclosed in the specification, and that as recited, a computer-readable medium can be interpreted to cover transitory propagating signals.

Claims 28-39 have been amended to specify that what is claimed is a “non-transitory” computer-readable medium. Further, applicants submit that there is support for this amended claim language at least at paragraph [0169] of the originally filed specification, which states that all or part of the elements discussed in the disclosure may be constructed using a CPU that operates under the control program. One skilled in the art would readily recognize this portion of the specification as providing clear support for the claimed computer-readable medium. See 37 C.F.R. §1.75(d). Withdrawal of the objection and rejection is requested.

Claims 1, 3-10, 13, 15-23, 26, 28-36 and 39 were rejected under 35 U.S.C. § 103 over U.S. Patent No. 6,865,160 (Bare) in view of U.S. Patent No 6,542,486 (Hatakeyama). Claims 11, 24 and 37 were rejected under 35 U.S.C. § 103 over Bare and Hatakeyama, and further in view of U.S. Patent No. 7,539,142 (Gurleg et al.). Claims 12, 25 and 38 were rejected under 35 U.S.C. § 103 over Bare and Hatakeyama, and further in view of U.S. Patent No. 5,878,026 (Greenberg et al.).

Amended claim 1 is directed to a load distributing method comprising the steps of: monitoring a path status of each path selectable of every packet input to a transmission node between two nodes, each of which can select plural communication paths, and storing path status information on the path status and a time from which the path status information is effective or packet identification information; estimating a packet arrival prediction time in each path, based on path status information, and a packet transmission history after the time from which the path status information is effective or a packet transmission history after transmission of a packet specified

with the packet identification information; and updating path selection or selection priority, based on the estimated arrival prediction time.

In Hatakeyama, the “response time” relates to a delay in each of the paths with respect to going and returning, and Hatakeyama’s invention relates to selection of a path based on the response time.

On the other hand, the claimed invention does not employ such a response time. In the claimed invention, the optimum path is selected based on the transmission history after the time from which the path status information is effective, or the transmission history after transmission of the packet specified with the transmitted packet identification information.

The differences can be seen, for example, in a case in which there is a difference of the delay between the downlink path (the path from a (self) node to a partner node) and the uplink path (the path from the partner node to the (self) node). A long “response time” does not justify that excessive load be placed on the downlink path as long as the long “response time” is due to a delay that has occurred in the uplink path. Even though the downlink path is selected based on the “response time” that caused such a difference of the result, the optimum path cannot be selected. On the other hand, using the claimed invention allows for the ability to select the optimum downlink path also when there is a difference of the path status between the downlink path and the uplink path.

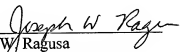
While it can be said that the “response time” could be considered one of the transmission histories, because it preserves the transmission time, the claimed invention selects the path based on the transmission history after the time from which the path status information is effective, or the transmission history after transmission of the packet specified with the transmitted packet identification information, out of the transmission histories. This differs from the cited portion of Hatakeyama. Applicants have not found any teaching in the other cited art that would remedy the abovementioned deficiencies of Hatakeyama as a reference against amended claim 1.

The other independent claims are believed distinguishable over the cited art for substantially similar reasons. The dependent claims are believed patentable for at least the same reasons as their respective base claims.

In view of the above amendments, the entry of which are respectfully requested, and remarks, applicants believe the pending application is in condition for allowance.

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Respectfully submitted,

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